

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
ACS of Alaska, Inc., ACS of Anchorage, Inc.,	)	WC Docket No. 08-220
ACS of Fairbanks, Inc., and ACS of the	)	
Northland, Inc., Petition for Conversion to Price	)	
Cap Regulation and Limited Waiver Relief	)	

**ORDER**

**Adopted: April 17, 2009**

**Released: April 17, 2009**

By the Acting Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we grant, to the extent described below, a petition for waiver filed by Alaska Communications Systems Group, Inc. (ACS) seeking to convert its rate-of-return local exchange carriers (LECs) to price cap regulation on July 1, 2009, pursuant to the framework the Commission established in the *Windstream Order*.<sup>1</sup> As explained below, consistent with the relief granted in the *Windstream Order*, ACS may convert its study areas to price cap regulation by establishing initial price cap indexes (PCIs) for its price cap baskets. In so doing, consistent with the waivers we grant, it shall target its average traffic-sensitive (ATS) rate for each study area to \$0.0095 as specified in section 61.3(qq)(2) of the Commission's rules.<sup>2</sup> We also grant ACS a waiver to allow it to continue to receive interstate common line support (ICLS) for the converted study areas, subject to certain conditions described in Section III.C. We find that these waivers will further the public interest by providing ACS regulatory incentives to maintain and enhance efficient operations and requiring the reduction of some access rates. The waivers granted in this order are subject to any revisions addressing intercarrier compensation, price cap

<sup>1</sup> ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of the Northlands, Inc., Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 08-220 (filed Oct. 22, 2008) (ACS Petition); *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294 at para. 2 (2008) (*Windstream Order*) (granting Windstream requested waivers to convert rate-of-return regulated cost study areas to price cap regulation). Three other carriers also have been granted authority to convert from rate-of-return to price cap regulation consistent with the *Windstream Order* framework. See *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, WC Docket Nos. 07-292, 07-291, 08-18, Order, 23 FCC Rcd 7353 (2008) (*Combined Price Cap Order*).

<sup>2</sup> 47 C.F.R. § 61.3(qq)(2).

regulation, or universal service requirements that the Commission may adopt in the future.

## II. BACKGROUND

2. ACS is a holding company with four wholly-owned subsidiaries subject to rate-of-return regulation. These subsidiaries include ACS of Alaska, Inc., ACS of Anchorage, Inc. (ACS-Anchorage), ACS of Fairbanks, Inc., and ACS of the Northlands, Inc., with a total of six study areas. ACS-Anchorage files its own tariffs, while the other ACS LECs (collectively referred to as the ACS-pooling LECs) participate in the common line and traffic-sensitive tariffs filed by the National Exchange Carrier Association (NECA).

3. *ACS Forbearance Order*. In 2007, the Commission granted ACS-Anchorage forbearance from certain dominant carrier regulations applicable to ACS's provision of interstate switched access services in the Anchorage study area. The Commission imposed certain conditions on the grant of forbearance relief with respect to ACS's interstate switched access services in Anchorage. Specifically, the Commission required ACS to, *inter alia*: (1) cap at current levels all of its switched access and end-user rate elements at the benchmark that applies to all of its competitors – ACS's tariffed rate as of June 30, 2007; (2) comply with the interstate access charge rules applicable to competitive LECs, with the exception that ACS must file tariffs for switched access and end-user rates, which may be done on one day's notice, subject to the rate caps; (3) file all contract offerings that include charges for switched access and/or end-user services as contract tariffs; (4) receive universal service support under the ICLS mechanism on a per-line basis at the current competitive ETC per-line level; (5) contribute to universal service based on the June 30, 2007 subscriber line charge (SLC) rates; and (6) maintain the allocation of common costs assigned to ACS and its affiliates located outside of Anchorage at current levels.<sup>3</sup>

4. The Commission also conditionally granted ACS's request for forbearance for mass market broadband Internet access transmission service and partially granted ACS's request for forbearance from Title II and *Computer Inquiry* requirements for certain specified enterprise broadband services that ACS offers in the Anchorage study area.<sup>4</sup> To avail itself of the granted forbearance relief for wireline broadband services, ACS was required to first file, and have approved by the Commission, a description of how it will properly allocate the costs for these services to address the cost shifting concerns raised by the forbearance.<sup>5</sup> ACS has not made such a filing.

5. *Windstream Order*. On March 18, 2008, the Commission released an order granting Windstream's request to convert rate-of-return regulated cost study areas to price cap regulation on July 1, 2008.<sup>6</sup> In the *Windstream Order*, the Commission directed Windstream to establish initial PCIs for its

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<sup>3</sup> *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304, 16307-08, para. 5 (2007) (*ACS Forbearance Order*), recon. pending.

<sup>4</sup> *ACS Forbearance Order*, 22 FCC Rcd at para. 1.

<sup>5</sup> *Id.* at para. 6.

<sup>6</sup> In the *Windstream Order*, the Commission described the rate-of-return and price cap regulations that variously apply to incumbent local exchange carriers' (LECs') provision of interstate access services. *Windstream Order*, 22 FCC Rcd at 5295-96, paras. 2-4.

price cap baskets using January 1, 2008 rates and 2007 base period demand.<sup>7</sup> The Commission also required Windstream to target its ATS rate to \$0.0065 per ATS minute of use pursuant to section 61.3(qq) of the Commission's rules, using an X-factor of 6.5 percent.<sup>8</sup> Finally, the Commission granted Windstream a waiver to allow it to continue to receive ICLS for the converted study areas.<sup>9</sup> Specifically, Windstream's per-line ICLS was calculated at its true-up 2007 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward.<sup>10</sup> This waiver was subject to several conditions. Windstream's aggregate annual ICLS is capped at an amount equal to its overall 2007 ICLS (after application of any required true-ups).<sup>11</sup> Windstream also must forego any recovery of a presubscribed interexchange carrier charge (PICC) or carrier common line (CCL) charge and forego assessing a \$7.00 non-primary residential line subscriber line charge (SLC) in conjunction with its receipt of frozen per-line ICLS.<sup>12</sup> The *Windstream Order* also is subject to Commission modification in its intercarrier compensation, price cap, or universal service reform proceedings.<sup>13</sup>

6. *ACS proposal.* ACS's waiver request seeks to allow it to convert its six study areas that are subject to rate-of-return regulation to price cap regulation on July 1, 2009.<sup>14</sup> ACS proposes to follow the methodologies used in the *Windstream Order* using 2008 data to develop its PCIs. ACS also proposes to target its ATS rate for each study area to \$0.0095 as required by section 61.3(qq)(2) of the Commission's rules using an X-factor of 6.5 percent.<sup>15</sup> ACS states that it will file a single tariff with individual rates for each study area.<sup>16</sup> ACS requests that the Commission grant it waivers comparable to those granted in the *Windstream Order* to allow ACS to continue to receive ICLS as a price cap carrier. ACS will forego any PICC or CCL charges that otherwise might be assessable under the *CALLS Order* and will forego any increase in the non-primary residential SLC cap.<sup>17</sup> ACS states that conversion to price cap regulation is in

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<sup>7</sup> *Id.* at paras. 11-14. For its two cost study areas that participate in the NECA interstate access tariffs, Windstream initialized the rates of these two companies to meet its authorized rate-of-return and then adapted those rates to the price cap rate structure in a manner similar to that used for its other study areas.

<sup>8</sup> *Id.* at paras. 15-16.

<sup>9</sup> *Id.* at paras. 19-22.

<sup>10</sup> *Id.* at para. 21.

<sup>11</sup> *Id.* at para. 22.

<sup>12</sup> *Id.* at para. 20.

<sup>13</sup> *Id.*

<sup>14</sup> ACS Petition at 1-2. ACS requests that the Commission relax the conditions imposed in the *ACS Forbearance Order* "(e.g., caps on individual switched access rates)" because ACS-Anchorage would be governed by the Commission's price cap rules. ACS Petition at 2 n.2.

<sup>15</sup> *Id.* at 6-7; *see also id.*, Attachment, Declaration of Thomas R. Meade, at para. 5.

<sup>16</sup> ACS Petition at 4.

<sup>17</sup> ACS Petition at 4-5; *see also Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12990-13013, paras. 75-128 (2000) (*CALLS Order*) (subsequent history omitted).

the public interest because it will allow it to become more efficient, innovative, and productive.<sup>18</sup> If its petition is granted, ACS seeks a waiver of the requirement in section 69.3(i)(1) of the Commission's rules that it notify NECA of its intent to withdraw its five pooling study areas from the NECA tariffs by March 1, 2009.<sup>19</sup>

### III. DISCUSSION

#### A. The Public Interest

7. We find that good cause exists to grant, to the extent described below, the ACS Petition to convert to price cap regulation on July 1, 2009.<sup>20</sup> The Commission concluded in 1990 that incentive-based regulation is preferable to rate-of-return regulation.<sup>21</sup> The Commission found that several benefits would flow from the adoption of price cap regulation, including incentives for carriers to become more productive, innovative, and efficient.<sup>22</sup> The Commission also found that price cap regulation is likely to benefit consumers directly or indirectly through lower access prices.<sup>23</sup> In subsequent annual tariff filings, several of the larger incumbent LECs adopted price cap regulation.

8. ACS seeks to take advantage of the opportunity provided by section 61.41(a)(3) of the Commission's rules and the *Windstream Order* to convert to price cap regulation.<sup>24</sup> ACS seeks to target its ATS rate to \$0.0095 and has agreed to accept the conditions applied to the relief granted in the *Windstream Order*. Consistent with the *Windstream Order*, we find that the ACS request offers the public interest benefits generally attributed to incentive regulation – specifically, it provides incentives for the carrier to become more efficient, innovative, and productive.<sup>25</sup>

9. The question presented by this petition is whether the public interest would be better served by strict enforcement of the current rules, or by waiving certain rules to allow ACS to adopt its proposal. Based on the information provided by ACS and the commenters, we find that the public interest will be

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<sup>18</sup> ACS Petition at 9-11.

<sup>19</sup> 47 C.F.R. § 69.3(i)(1); ACS Petition at 6 n.18.

<sup>20</sup> Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

<sup>21</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6789, para. 21 (1990) (*LEC Price Cap Order*).

<sup>22</sup> *Id.* at 6791, para. 31.

<sup>23</sup> *Id.* at 6791, para. 33.

<sup>24</sup> See 47 C.F.R. § 61.41(a)(3) (which recognizes that local exchange carriers may elect “price cap regulation provided the carrier is otherwise eligible”).

<sup>25</sup> See *LEC Price Cap Order*, 5 FCC Rcd at 6791, para. 31.

better served by granting the requested relief. Similar to the Commission's findings in the *Windstream Order*, grant of the waiver requested here will facilitate the achievement of Commission policies. Moreover, granting the requested relief will directly lower some access rates over time and will likely reduce the ICLS that ACS receives in the future. The relief granted in this order is subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

10. We conclude that the conditional forbearance granted ACS-Anchorage in the *ACS Forbearance Order* does not preclude granting ACS's petition. For one, the *ACS Forbearance Order* did not alter the opportunity provided by section 61.41(a)(3) of the Commission's rules for ACS to convert to price cap regulation.<sup>26</sup> Moreover, as ACS recognizes, by converting to price cap regulation, ACS will be foregoing the conditional forbearance granted in the *ACS Forbearance Order*.<sup>27</sup> Given that ACS was generally subject to rate-of-return regulation, the conditions adopted in the *ACS Forbearance Order* addressed concerns that otherwise would arise from the grant of forbearance. Because ACS no longer will be a rate-of-return carrier, and will not be subject to the forbearance relief granted in the *ACS Forbearance Order*, those conditions are inapplicable.<sup>28</sup> Thus, ACS-Anchorage, along with the other ACS study areas converting to price cap regulation, will be subject to the Part 61 and 69 rules applicable to price cap LECs, which include the 7- and 15-day tariff filing requirements of section 204(a)(3) of the Act<sup>29</sup> and the rules governing pricing flexibility for price cap LECs, just like the other carriers that have converted from rate-of-return to price cap regulation.<sup>30</sup>

#### B. Price Cap Baskets

11. Part 69 of the Commission's rules establishes interstate access rate elements that are designed to recover the costs of various parts of the local network. Under price cap regulation, these rate elements are grouped together into five price cap baskets: the common line, marketing and transport interconnection charge (CMT) basket; the traffic sensitive switched interstate access basket (traffic sensitive basket); the trunking basket; the special access basket; and the interexchange basket.<sup>31</sup> Each

<sup>26</sup> See 47 C.F.R. § 61.41(a)(3) (which recognizes that local exchange carriers may elect "price cap regulation provided the carrier is otherwise eligible").

<sup>27</sup> See Letter from Karen Brinkman, Esq., Counsel to ACS, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 08-220 at 1-2 (filed Mar. 13, 2009) (ACS March 13 *Ex Parte* Letter). Forbearance petitions require tremendous Commission resources to resolve, and we encourage parties to consider whether particular requests for forbearance will result in a meaningful outcome if granted, rather than shortly being rendered irrelevant.

<sup>28</sup> For this reason, we reject GCI's proposal that we require ACS to conduct the cost allocation showing required by the *ACS Forbearance Order* before allowing ACS to convert its Anchorage and NECA-pooling entities to price caps. Comments of General Communications Inc., WC Docket No. 08-220 at 5-6 (filed Dec. 8, 2008) (GCI Comments). Indeed, given that ACS has not made those cost allocation filings, and thus has not availed itself of the associated conditional forbearance, ACS is in the same position as each of the other rate-of-return LECs that have converted to price cap regulation, for which no such cost allocation showing was required. See generally *Windstream Order*, 23 FCC Rcd 5294; *Combined Price Cap Order*, 23 FCC Rcd 7353.

<sup>29</sup> 47 U.S.C. § 204(a)(3).

<sup>30</sup> ACS March 13 *Ex Parte* Letter at 2.

<sup>31</sup> See 47 C.F.R. § 61.42. The interexchange basket is established only by price cap LECs that offer interstate interexchange services that are not classified as access services for the purposes of Part 69 of the Commission's (continued....)

basket is subject to its own price cap.<sup>32</sup> The interstate access rates associated with these baskets may be assessed on either end-user customers or carriers.

### 1. CMT Basket

12. To recover costs associated with the local loop, or common line, rate-of-return LECs assess certain interstate access charges on end-user customers. Price cap LECs generally assess the same types of common line-related charges on their end-user customers, although the levels of such charges are determined differently. The common line-related end-user charges assessed by both rate-of-return and price cap LECs include SLCs, Line Port Costs in Excess Of Analog, and Special Access Surcharges.<sup>33</sup> Price cap LECs may also assess PICCs and CCL charges on interexchange carriers in certain instances.<sup>34</sup> A price cap LEC's common line rates are limited by a CMT basket PCI and by its average price cap CMT revenues per-line month,<sup>35</sup> in addition to the SLC caps imposed by Part 69 of the Commission's rules. We describe in some detail how ACS shall convert its common line rates to the price cap common line structure in the following paragraphs.

13. We begin with the calculation of ACS's initial average price cap CMT revenues per-line month. Price cap CMT revenue is the maximum total revenue a filing entity would be permitted to receive from SLCs, PICCs, CCL charges, and marketing expenses, using base period lines. Price cap CMT revenue does not include price cap LEC universal service contributions.<sup>36</sup> Thus, for purposes of the conversion, ACS's CMT revenues will include its 2008 SLC revenues plus the marketing expenses shifted to the CMT basket from the traffic-sensitive and trunking baskets pursuant to section 69.156 of the Commission's rules.<sup>37</sup> ACS's average price cap CMT revenues per-line month will then be its CMT revenues divided by its 2008 base period demand.<sup>38</sup> The average price cap CMT revenues per-line month, in conjunction with the \$6.50 per-line cap on residential and single line business lines and the \$9.20 per-line cap on multiline business lines, will create the ceiling on the SLC charges that ACS may assess end users.<sup>39</sup>

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rules. 47 C.F.R. § 61.42(d)(4). ACS does not indicate whether it offers such services. To the extent that it does, it must establish a price cap interexchange basket consistent with the Commission's rules. *Id.*

<sup>32</sup> 47 C.F.R. § 61.42.

<sup>33</sup> 47 C.F.R. §§ 69.104, 69.130 (rate-of-return carrier SLC and line port surcharge in excess of analog rules); 47 C.F.R. §§ 69.152, 69.157 (price cap carrier SLC and line port surcharge in excess of analog rules); 47 C.F.R. § 69.115 (special access surcharge rules applicable to both rate-of-return and price cap carriers).

<sup>34</sup> 47 C.F.R. §§ 69.153, 69.154.

<sup>35</sup> Price cap CMT revenues are a carrier's common line, marketing, and transport interconnection charge revenues. 47 C.F.R. §§ 61.3(cc), 61.42(d)(1).

<sup>36</sup> 47 C.F.R. § 61.3(cc).

<sup>37</sup> 47 C.F.R. § 69.156. The use of the \$6.50 SLC from 2008 in calculating the price cap CMT revenues will reflect ACS's commitment to not assess a \$7.00 SLC on non-primary residential lines, as would otherwise be permitted for price cap carriers, as part of its receipt of frozen per-line ICLS.

<sup>38</sup> 47 C.F.R. § 61.3(d).

<sup>39</sup> See generally 47 C.F.R. § 69.152.



14. The other control on the CMT basket is the common line PCI. To create its common line PCI, ACS shall multiply its January 1, 2009 end user rates by 2008 base period demand.<sup>40</sup> To this result, it shall add the marketing expenses shifted to the CMT basket pursuant to section 69.156.<sup>41</sup> One final adjustment will be necessary for ACS to establish its initial CMT basket PCI. ACS has committed, in conjunction with its receipt of universal service at a level equal to its 2008 ICLS receipts frozen on a per-line basis, to forego the recovery of any PICC or CCL charge.<sup>42</sup> To reflect this commitment, and to avoid any headroom that may be created by foregoing this recovery, ACS must reduce its CMT basket PCI by an amount equal to the PICC and CCL revenues it is foregoing.

## 2. Traffic Sensitive and Trunking Baskets

15. Rate-of-return and price cap LECs assess local switching and transport charges on interexchange carriers. Price cap LECs reflect the appropriate rates and demands in PCIs for the traffic-sensitive and trunking baskets. As modified by the ACS March 13 Letter, ACS proposes to establish initial switched access rates and PCIs for ACS-Anchorage using January 1, 2009 tariffed rates times 2008 base period demand.<sup>43</sup> ACS proposes to establish initial switched access rates and PCIs for the ACS-pooling LEC study areas using 2008 revenue requirements and 2008 demand data.<sup>44</sup> ACS will target its ATS rates to \$0.0095 separately for each study area and will use an X-factor of 6.5 percent to reduce its tariffed charges to the ATS target rate.<sup>45</sup>

16. ACS's proposal for converting its switched access rates to price caps is reasonable and consistent with prior Commission orders. It must establish initial traffic-sensitive and trunking basket PCIs consistent with the commitment described in the preceding paragraph.<sup>46</sup> The PCIs must be reduced to eliminate any marketing expenses that were recovered through switched access rates in 2008.<sup>47</sup> ACS shall begin reducing its ATS rates to its respective target ATS rates through the use of a 6.5 percent X-factor in its July 1, 2009 tariff filing consistent with the requirements of section 61.45(i) of the Commission's rules.<sup>48</sup> This will further the public interest by ensuring that carrier customers receive

<sup>40</sup> For the study areas leaving the NECA tariffs, the January 1 rate shall be the rate determined by dividing 2008 revenues by the appropriate 2008 demand.

<sup>41</sup> 47 C.F.R. § 69.156.

<sup>42</sup> ACS Petition at 4-5. Although interstate access support (IAS) for price cap carriers is included in the common line PCI and adjusted annually as projected IAS receipts change, the ICLS amount here will be frozen. ACS should, therefore, exclude its ICLS receipts from the PCI calculations since these receipts will have no effect on the PCI. This will also simplify the ICLS true-up process.

<sup>43</sup> See ACS March 13 *Ex Parte* Letter at 3. Initially, ACS had proposed to use its July 1, 2008, tariffed rates to initialize its PCIs for ACS-Anchorage. ACS Petition at 5. ACS notes that ACS's rates did not change from July 1, 2008, to January 1, 2009. ACS March 13 *Ex Parte* Letter at 3.

<sup>44</sup> ACS Petition at 5-6.

<sup>45</sup> *Id.* at 6.

<sup>46</sup> Any local switching support (LSS) ACS may receive will be excluded from the PCI calculations, as is done by other price cap LECs. We note that if ACS becomes more efficient, LSS will decrease.

<sup>47</sup> See 47 C.F.R. § 69.156.

<sup>48</sup> 47 C.F.R. § 61.45(i).

reduced local switching and transport rates. Consistent with the Commission's price cap rules, ACS must establish actual price indexes (APIs), service categories, and service band indexes (SBIs) for the traffic sensitive and trunking baskets.<sup>49</sup> ACS shall include the cost studies used to develop the switched access rates in the supporting materials filed with its initial price cap tariff.

17. We reject AT&T's contention that ACS does not qualify for the \$0.0095 ATS rate. First, AT&T asserts that section 61.3(qq)(2) is only available to rural LECs and that ACS-Anchorage does not qualify as a rural LEC.<sup>50</sup> As ACS notes, the text of the rule is not tied to whether a carrier is "rural," and we decline to read such an interpretation into the rule.<sup>51</sup> Second, AT&T argues that ACS access lines per square mile for the holding company is greater than 19 per square mile.<sup>52</sup> In making this assertion, AT&T used 1994 square mileage data and the switched access lines from ACS's most recent USF data submission for 2007 in making its calculation.<sup>53</sup> ACS responds that the submission includes unbundled network elements (UNEs) sold to competitors and asserts that UNE lines are not appropriately included in making the access lines per square mile calculation.<sup>54</sup> We agree with ACS that UNE lines should not be included in making the calculation. Section 61.3(qq)(2) allows an ATS target rate of \$0.0095 for carriers with a "holding company average of less than 19 Switched Access End User Common Line charge lines per square mile." UNE loops are not "Switched Access End User Common Line(s)," because UNE loops are not an ACS switched access line, but rather are used by ACS's competitors to provide their switched access.<sup>55</sup> Accordingly, we agree with ACS that it satisfies the less than 19 lines per square mile calculation that permits it to target its ATS rates to \$0.0095.<sup>56</sup>

<sup>49</sup> 47 C.F.R. §§ 61.46; 61.42(e)(1) and (2); 61.47.

<sup>50</sup> Comments of AT&T, WC Docket No. 08-220 at 2-3 (filed Dec. 8, 2008) (AT&T Comments).

<sup>51</sup> ACS Reply at 3. As AT&T notes, the *CALLS Order* stated that "A further modification of the CALLS Proposal submitted by CALLS and Valor Telecommunications Company proposes a third target rate of 0.95 cents for entirely rural price cap LECs." AT&T Comments at 3 n.7 (citing *CALLS Order*, 15 FCC Rcd at 13021-22, para. 142). AT&T then claims that ACS is not "entirely rural" based on the definition of a "rural telephone company" in section 153(37) of the Act. However, neither the text of the *CALLS Order* nor the CALLS/Valor *ex parte* filing proposed, or relied upon, the definition of "rural telephone company" in section 153(37) of the Act to define the scope of carriers that would qualify for the 0.95 cent target rate. Rather, they proposed applying the 0.95 cent target rate to carriers based on the criteria ultimately adopted in the Commission's rules. *CALLS Order*, 15 FCC Rcd at 13021-22, para. 142 & n.304. See also Letter from John T. Nakahata, Counsel to CALLS, to Magalie Roman Salas, Secretary, FCC, CC Docket Nos. 96-262, 94-1, 96-45, 99-249, Attach. at 1 & n.1 (filed Apr. 14, 2000) (noting that "[t]he Rural Task Force found that rural companies have an average teledensity of 19 lines per square mile," and proposing a rule based on those criteria).

<sup>52</sup> AT&T Comments at 2-3.

<sup>53</sup> *Id.* at 3.

<sup>54</sup> ACS Reply at 4.

<sup>55</sup> See *CALLS Order*, 15 FCC Rcd at 13029, para. 162.

<sup>56</sup> As ACS explains, when UNEs are excluded, "[e]ven assuming AT&T's square mileage estimate to be accurate, using the correct line count the ACS LECs would still serve fewer than 19 'Switched Access End User Common Line Charge lines' per square mile." ACS Reply at 4 (citing Attachment, Declaration of Thomas R. Meade in Support of the Reply Comments of the ACS LECs at para. 5).



### 3. Special Access Basket

18. ACS proposes to establish initial special access rates and PCIs for the ACS-Anchorage study area using January 1, 2009 tariffed rates times 2008 base period demand.<sup>57</sup> ACS proposes to establish initial special access rates and PCIs for the ACS-pooling LEC study areas using 2008 revenue requirements and 2008 demand data targeted to earn 11.25 percent.<sup>58</sup> We agree that ACS's proposals are a reasonable approach to setting initial PCIs for the special access baskets for its study areas and are consistent with the manner in which special access rates were initialized in previous price cap conversions.<sup>59</sup> Under the rules adopted in the *CALLS Order*, there is no requirement for further reductions in the special access PCIs.<sup>60</sup> Accordingly, ACS shall set its initial PCIs for special access using the above-described procedures. Consistent with the Commission's price cap rules, ACS must establish APIs, service categories, and SBIs for the special access basket for each of its study areas.<sup>61</sup> ACS shall include the cost studies used to develop the special access rates in the supporting materials filed with its initial price cap tariff.

#### C. Universal Service

19. ACS proposes to continue to receive high-cost universal service support to recover explicitly a portion of its common line costs after it converts its rate-of-return cost study areas to price cap regulation.<sup>62</sup> The high-cost support mechanisms available to allow eligible telecommunications carriers (ETCs) to recover common line costs through explicit universal service support, rather than implicitly through a portion of access charge rates, are ICLS for rate-of-return carriers, and IAS for price cap carriers.<sup>63</sup> The Commission's rules do not make ICLS available to price cap carriers,<sup>64</sup> and the Commission tentatively has concluded that carriers converting from rate-of-return regulation to price cap regulation are ineligible for IAS established in the *CALLS Order*.<sup>65</sup> Accordingly, absent Commission intervention, the requested conversion to price cap regulation could result in the loss of explicit support by ACS to offset the interstate portion of its loop costs that are not recovered through interstate access charges.

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<sup>57</sup> ACS Petition at 7; ACS March 13 *Ex Parte* Letter at 3.

<sup>58</sup> ACS Petition at 7.

<sup>59</sup> See *Windstream Order*, 23 FCC Rcd at 5302, para. 18; *Combined Price Cap Order*, 23 FCC Rcd at 7363, para. 21.

<sup>60</sup> 47 C.F.R. § 61.45(b)(1)(iv).

<sup>61</sup> 47 C.F.R. §§ 61.46; 61.42(e)(3); 61.47.

<sup>62</sup> See ACS Petition at 7-8.

<sup>63</sup> 47 C.F.R. §§ 54.901; 54.801.

<sup>64</sup> See 47 C.F.R. § 54.901(a) (providing ICLS for rate-of-return carriers).

<sup>65</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Federal-State Joint Board on Universal Service, CC Docket Nos. 00-256, 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4163, para. 93.

20. ACS argues that realization of all of the public interest benefits of its conversion to price cap regulation depends upon its continued receipt of some high-cost universal service support for its loop costs.<sup>66</sup> As modified by the ACS March 13 Letter, ACS requests that the Commission grant a partial waiver of applicable rules so it could receive ICLS set at a frozen per-line amount based on trued-up 2008 ICLS receipts.<sup>67</sup> Under this approach, as discussed above, ACS agrees to forego any PICC or CCL charges that might otherwise be assessable under the price cap rules, and will forego an increase in the non-primary residential SLC cap from \$6.50 to \$7.00.<sup>68</sup> The Commission has previously expressed a preference for explicit support, through universal service support mechanisms, as opposed to implicit support, through access charges.<sup>69</sup> Therefore, we find that ACS should continue to receive high-cost support for loop costs via ICLS. We find good cause to grant the partial waiver request so ACS may continue to receive ICLS at 2008 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward. Furthermore, as the Commission did with Windstream, we cap ACS's future overall annual ICLS at an amount equal to its overall 2008 ICLS, after application of any required true-ups. This waiver is conditioned upon ACS's adherence to the commitments discussed above and subject to Commission modification in its access charge or universal service reform proceedings.<sup>70</sup>

21. For each study area, the frozen per-line ICLS amount will be based on the amount of per-line ICLS ACS received in 2008, after the application of any true-ups based on actual cost and revenue data for 2008. Pursuant to the *ACS Forbearance Order*, the 2008 per-line ICLS amount for ACS – Anchorage will be the frozen ICLS amount determined in that Order. The monthly frozen per-line ICLS amount for the ACS-pooling LECs will be calculated by dividing the final annual 2008 ICLS amount by twelve times the average of each carrier's line counts as of December 31, 2007, and December 31, 2008.<sup>71</sup> Because this final frozen per-line ICLS cannot be determined until after the ACS-pooling LECs file their 2008 cost and revenue data, the ACS-pooling LECs will receive an interim per-line ICLS amount until

<sup>66</sup> See ACS Petition at 7.

<sup>67</sup> ACS Petition at 8; ACS March 13 *Ex Parte* Letter at 2 (proposing to use frozen 2008 ICLS for ACS-Anchorage, capped at the trued-up aggregate level of 2008 support).

<sup>68</sup> See ACS Petition at 8, n.31.

<sup>69</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19621-22, 19642-46, paras. 15, 62-68 (2001) (*MAG Order*); *CALLS Order*, 15 FCC Rcd at 13006, para. 111.

<sup>70</sup> 47 C.F.R. § 1.3; see also *WAIT Radio* 418 F.2d at 1159; see also *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304, 16337 n.211 (2007) (finding that, "because a condition of the forbearance granted by this order requires ACS to receive ICLS at the existing per-line rate, rather than based on the rate-of-return regulated carrier requirements in section 54.901(a), there is good cause to waive these rules").

<sup>71</sup> For example, if a study area had a final 2008 ICLS of \$4,800, and its line counts as of the end of 2007 and 2008 were, respectively, 110 and 90, that study area would have a frozen ICLS per-line of \$4 per month – \$4,800/(((110+90)/2)\*12).

the final amount can be determined.<sup>72</sup> This interim amount will be calculated by dividing the amount of ICLS disbursed to each study area in December 2008, not including any prior period true-ups, by the number of lines served in each study area as of December 31, 2008. When the ACS-pooling LECs' final frozen per-line ICLS amount is determined, any support distributed pursuant to the interim per-line ICLS amount will be trued up to the final per-line level.<sup>73</sup>

22. We partially waive section 54.901(a) of the Commission's rules, which makes ICLS available only to rate-of-return carriers, so that ACS may convert its rate-of-return study areas to price cap regulation but continue to receive ICLS for those study areas.<sup>74</sup> Because ACS will be receiving ICLS on a frozen per-line basis, the amount of ICLS it receives will decline if its number of lines declines. Further, we partially waive the ICLS reporting and support calculation provisions of sections 54.901 and 54.903 of the Commission's rules so that ACS's ICLS may be set at 2008 per-line disaggregated ICLS amounts and frozen at those per-line levels going forward.<sup>75</sup> Finally, we waive any portions of sections 54.802 through 54.806 of the Commission's rules that would preclude ACS from receiving ICLS at the 2008 per-line disaggregated ICLS amounts.<sup>76</sup> To ensure that these waivers do not result in ACS receiving increased ICLS in the future due to any increases in its line counts, as a condition of these waivers, we cap ACS's future overall annual ICLS at an amount equal to its overall 2008 ICLS, after application of any required true-ups.<sup>77</sup>

#### D. Other Issues

23. Incumbent LECs that plan to leave one or both of the NECA tariffs are required by section 69.3(i)(1) of the Commission's rules to notify NECA of their intent by March 1 of the tariff filing year in which they plan to leave the tariff(s).<sup>78</sup> ACS requests a waiver of section 69.3(i)(1) to allow it to notify

<sup>72</sup> The actual cost and revenue data required to true-up the ACS-pooling LECs 2008 ICLS must be filed by December 31, 2009. See 47 C.F.R. § 54.903(a)(4).

<sup>73</sup> We also note that the ACS-pooling LECs will be subject to regular ICLS true-ups for the period up until its conversion to price cap status. Accordingly, the ACS-pooling LECs will be required to file actual cost and revenue data for the first six months of 2009 pursuant to section 54.903(a)(4). See 47 C.F.R. § 54.903(a)(4). Pursuant to section 54.307 of the Commission's rules and the tribal/Alaska native lands exception to the Commission's interim cap on competitive ETC high-cost support, competitive ETCs serving the affected study areas, and electing this exception, will receive the same per-line support amounts and be subject to the same true-ups as ACS. Competitive ETCs that do not elect the tribal/Alaska native lands exception will receive support subject to the interim cap. See 47 C.F.R. § 54.307; *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*); *High-cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, FCC 09-16 (2009) (*Interim Cap Waiver Order*).

<sup>74</sup> 47 C.F.R. § 54.901.

<sup>75</sup> See 47 C.F.R. §§ 54.901, 54.903. We note that ACS must comply with those reporting requirements for all true-ups and calculations necessary to determine the ultimate frozen per-line ICLS amount, as described in paras. 20-21 *supra*.

<sup>76</sup> See 47 C.F.R. §§ 54.802 - 54.806.

<sup>77</sup> See ACS March 13 *Ex Parte* Letter at 2; *Windstream Order*, 23 FCC Rcd at 5304, para. 22. The annual ICLS cap would apply only to those converting study areas that are the subject of this order.

<sup>78</sup> 47 C.F.R. § 69.3(i)(1).

NECA of its intent to withdraw the ACS-pooling LECs from the common line and traffic-sensitive tariffs once the Commission has reached a decision on its waiver request.<sup>79</sup>

24. As noted above, the Commission may waive its rules for good cause shown.<sup>80</sup> We find good cause exists to waive section 69.3(i)(1) of the Commission's rules to permit ACS to notify NECA of its intent to withdraw the ACS-pooling LEC study areas from the NECA common line and traffic-sensitive tariffs within fifteen (15) days of the release of this order. Absent a waiver, the relief we grant ACS in this order would be nullified because of this procedural limitation. We find that grant of this waiver will not impose an undue hardship on NECA because it involves only five study areas and NECA has been aware of ACS's request for the waivers necessary to make this conversion to price cap regulation.

25. Finally, GCI raised a concern about the effect of the interim competitive ETC cap on the relative levels of ICLS that ACS and GCI would receive.<sup>81</sup> GCI is incorrect that the interim cap should reduce ACS's per-line ICLS, because the cap applies only to competitive ETC support, and ACS is not a competitive ETC.<sup>82</sup> In any case, the Commission recently found uncapped support is available to competitive ETCs under the tribal lands/Alaska Native regions exception as of August 1, 2008, the effective date of the *Interim Cap Order*.<sup>83</sup> Thus, if GCI opts into the exception, it will receive uncapped high-cost support, i.e., the same per-line support amount ACS receives.

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<sup>79</sup> ACS Petition at 6 n.18.

<sup>80</sup> See *supra* note 35; 47 C.F.R. § 1.3.

<sup>81</sup> GCI Comments at 9.

<sup>82</sup> See *Interim Cap Order*, 23 FCC Rcd at 8839, para. 10 (finding that it is not necessary to adopt additional caps on support provided to incumbent LECs).

<sup>83</sup> *Interim Cap Waiver Order*, at para. 7.

**IV. ORDERING CLAUSES**

26. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-203, and 254(g), and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Alaska Communications Systems Group, Inc., petition for waiver IS GRANTED to the extent described herein.

27. IT IS FURTHER ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that section 69.3(i)(1) of the Commission's rules IS WAIVED to the extent indicated herein.

28. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Acting Chief, Wireline Competition Bureau